

Notice of Allowability

Application No.

10/812,106

Examiner

Marc S. Zimmer

Applicant(s)

PRUD'HOMME ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to August 31, 2006.
2. ☒ The allowed claim(s) is/are 54-62,64-74 and 76-83.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on September 21, 2006, Robert Kent requested an extension of time for 1 MONTH(S) and authorized the Director to charge Deposit Account No. 08-0300 the required fee of \$120.00 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In claims 54 and 67, before the phrase "ph-adjusting agent", please insert the word

-- encapsulated --.

In claim 76, please change the semi-colon and line 3 to a comma and, after the comma and before the word "and", please insert the following:

-- an encapsulated pH adjusting agent, base-releasing material, or acid-releasing material, --.

Please cancel claim 84.

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Applicant has responded to the Examiner's final rejection by inserting, in part, the subject matter of claims 63 and 75 into claims 54 and 67 respectively. The Examiner informed Applicant that it should be specified that the pH-adjusting agent is encapsulated and, further, that it would be necessary to insert these same limitations into independent claim 76. Applicant indicated that they were amenable to these changes and authorized the Examiner to amend the claims.

Claim 84 was cancelled because its subject matter had been inserted into independent claim 76.

It is these amendments that the Examiner believes provide a patentable distinction over the prior art. There is no disclosure of an equivalent material in *Heitz* nor did the prior art motivate one of ordinary skill to modify the invention taught by *Heitz* to incorporate the same. Although breakers are known- the Specification seems to indicate that such is the role of the latent acids/bases, there is not even cursory mention of breakers in the *Heitz* disclosure nor is it even clear from the prior art that latent acids/bases would fulfill this role when using the amphiphilic polymers contemplated by that reference. That is to say, any holding that the incorporation of latent acids/bases was obvious would have been, in the Examiner's estimation, based on an improper hindsight reconstruction of the instant invention.

As an aside, it should be mentioned that Applicant's affidavit was not particularly compelling as a foundation for overcoming the prior art. Indeed, it was essentially a restatement of what had already been asserted before by Applicant's attorney without any accompanying evidence that substantiated their position. (The Examiner looked up

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at least one of the references cited in the affidavit but there was no suggestion that a template was required for polymersomes to be formed. Moreover, another reference cited in Applicant's Specification, likewise, failed to affirm Applicant's contention.)

An updated survey of the prior art failed to yield a reference more germane than those already of record. Therefore, claims 54-62, 64-74, and 76-83 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc S. Zimmer whose telephone number is 571-272-1096. The examiner can normally be reached on Monday-Friday 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 21, 2006



MARC S. ZIMMER
PRIMARY EXAMINER